

# Order

Michigan Supreme Court  
Lansing, Michigan

June 8, 2007

Clifford W. Taylor,  
Chief Justice

129733

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

HARTMAN & EICHHORN BUILDING  
COMPANY, INC.,  
Plaintiff/Counter Defendant,

v

SC: 129733  
COA: 249847  
Oakland CC: 2001-032203-CK

STEVEN DAILEY and JANINE DAILEY,  
Defendants/Counter Plaintiffs/  
Third-Party Plaintiffs/Appellees,  
and

GEORGE H. PRESLEY, and ABN-AMRO,  
d/b/a STANDARD FEDERAL BANK,  
Defendants,  
and

JEFFRY R. HARTMAN,  
Third-Party Defendant-Appellant.

By order of May 4, 2006, we GRANTED the defendant's application for leave to appeal, limited to the questions involving the Michigan Consumer Protection Act's application to residential builders. We now VACATE the opinion of the Court of Appeals to the extent it is inconsistent with *Liss v Lewiston-Richards, Inc.*, \_\_\_\_ Mich \_\_\_\_ (Docket No. 130064, decided June 6, 2007). However, because the defendant seeks to rely on the affirmative defense provided in MCL 445.904(1)(a), and the defendant failed to raise the affirmative defense of the Michigan Consumer Protection Act exemption of regulated activities in his first responsive pleading, that defense is not properly before this Court. We REMAND this case to the Oakland Circuit Court for further proceedings consistent with this order and *Liss*.



t0530

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 8, 2007

*Corbin R. Davis*

Clerk